IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 8710 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL HATHIBHAI NAGJIBHAI - Applicant(s)
Versus
PATEL NARSINGBHAI JESINGBHAI & 3 - Respondent(s)

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Appearance :
MR PR NANAVATI for Applicant(s) : 1,
MR YOGESH S LAKHANI for Respondent(s) : 1 - 3.
MR AY KOGJE, APP for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/04/2007

ORAL JUDGMENT

1. This application has been filed by the original complainant seeking cancellation of bail granted to opponents nos. 1 to 3 herein by this Court by

order dated 26th December, 2002 passed in Crim. Misc. Application No.4943/2002.

2. The petitioner had lodged a complaint being C.R. No.I-93/2002 on 9th July, 2002 before the Khedbrahma Police Station. Gist of the contents of the complaint are as follows :

2.1 The complainant had a son named Dilipkumar(also known as “Madan”) besides other children. Dilipkumar had a friend named Narendrabhai Kodarbhai Patel(also known as “Natho”). On 6th July, 2002, the complainant received a communication at about 7 O' Clock in the evening that his son Dilipkumar and his friend Narendra and Dilip alias Dalabhai Mohanbhai Patel have been taken near a Well named as Maglivala Well, by Narsibhai Jaisangbhai Patel, Mohanbhai Haribai Patel and Rajubhai Haribhai Patel to give them beating in connection with eloping of Nareshbhai Motibhai Patel who is working in the hospital in village with a nurse Pinki by name working in the hospital. Upon receiving the information, the complainant along with three four other persons went to the spot and found that Narsibhai, Mohanbai and Rajubhai were telling his son and his friend that they have helped Naresh and Pinki to run away and that therefore, they should find and bring them back, failing which, they would be in trouble and they would not be

left alive. Son of the complainant told him that he was beaten by Narsibhai Jaisangbhai with a “Chappal” and was told that he must find the couple otherwise, he would not live. Maheshbhai was telling Madhabhai that couple must be found in two days otherwise, if he sees him in the village, he will kill him. Dilip alias Dalabhai also was giving threat to these three boys of killing them. The complainant thereafter, brought the boys home and was told that all three persons were beaten with fist and kick blows and were told that you have helped the couple to elope and if you do not bring them back to the village within two days, there will be serious consequences.

2.2 Father of Madhabhai namely Kodarbhai Khalabhai also told the complainant that Rakeshbhai Haribhai Patel had come to their house in the afternoon and told that Madha had escorted his brother in law Nareshbhai till Idar and if he does not return within two days, he will burn his son in full public view in the village. He accused Madha of having destroyed the family life of his sister. Rakesh left house of Kodarbhai saying that within two days if his brother in law does not return, he will come back with more people and will finish Madha and Dilip. With these threats, Madha had got extremely scared. The complainant narrated this incident to his son Madan and told him that

Rakesh is looking for you and he should therefore, not move around freely in the village. After the said incident, the son of the complainant and his friend Madhabhai had got very scared and both of them went to sleep in the house of his neighbour Kesarbhai Galbabhai Patel without taking any food. Even at night when they were woken up for food, they did not get up. Early in the morning on 7th July, 2002, at 6 O' Clock, both the friends went out on the Motorcycle of the neighbour and said that they were going to Khedbrahma.

2.3 At about 9:30 in the morning of the same date, son of the complainant i.e. Madan spoke to the complainant on telephone and said that he will be coming back within half an hour. Madhabhai also spoke to the Complainant. Both these boys however, did not return home till about 5 O' Clock in the evening. The complainant therefore, made a few phone calls at Khedbrahma to try to contact the boys but got no information about their whereabouts. Thereafter, Kodarbhai came to the complainant and both of them awaited return of the boys, but thinking that boys might have gone little far, they went to sleep. On 8th July, 2002 at about 2 O' Clock in the afternoon, the complainant came to know that motorcycle of Bhikabhai is found on the road between Khedbrahma to Vadali at the spot called Indravadan Tekri. The complainant and

Kodarbhai therefore, went to the place and identified the motorcycle and found that large number of people had gathered around the spot. At some distance in the bushes, they found two dead bodies hanging from a tree. Upon inquiry, they found that the dead bodies were of their sons Madan and Madhabhai. The complainant therefore, believed that being extremely scared of the threat of being beaten and on account of being harassed by Narsibhai Jaisangbhai Patel, Mohanbhai Haribai Patel, Rajubhai Haribhai Patel and Rakeshbhai Haribhai Patel, the boys had committed suicide.

3. Pursuant to the said complaint, the police carried out the investigation and submitted the charge-sheet in October 2002 alleging offences punishable under Sections 306, 323, 506(2) read with Section 114 of Indian Penal Code. Respondents nos. 1 to 3 herein are the accused nos. 1 to 3 in the said charge-sheet.

4. The present respondents nos. 1 to 3 and Rakeshbhai moved a bail application before this Court being Criminal Misc. Application No.4943/2002. By a detailed order dated 26th December, 2002, Learned Single Judge of this Court granted bail to all the accused persons on certain terms and conditions.

4.1 While granting the bail, Learned Single

Judge made following observations in paragraph- 6 :

> "6. Today the attention of the Court has been invited to the report dated 21.12.2002, whereby it is stated that the handwritings found on the note recovered from person of one of the deceased do not match with handwritings of the accused-applicants. Having gone through the P.M. Note, FSL report as well as other papers on record including statement dated 10.07.2002 of Dilip alias Dalabhai Mohanbhai Patel and as the record stands today, the charges alleged against the accused - applicants cannot be stated to go beyond Sections 306, 323, 506(2) and 114 of IPC. The apprehension expressed on behalf of the complainant through Mr.Nanavati that this is a case which would require invocation of Section 302 of IPC cannot be said to be supported by evidence that is available on record today. Mr.Nanavati may be correct in contending that there are various loose ends in so far as the investigation is concerned and in case the investigation is pursued properly and to its logical end it may reveal a different story altogether. However, as record stands today it is not possible for this Court to state with certainty that there might be possibility of some other charge being fastened against the applicants. Be that as it may, it is not for this Court to advise the prosecution how to go about its duties. Suffice it to state that the state of affairs reveals a very sorry picture."

4.2 However, on the opinion that it is not possible to state that the applicants will not be available for trial or that they would not cooperate in investigation or would hamper the investigation, the learned Judge was inclined to grant bail to all four applicants therein.

5. The applicant herein i.e. original complainant was not satisfied with the nature of investigation carried out. In fact, the applicant appeared to be of the opinion that it was a case of murder and not suicide. The applicant therefore, requested this Court and sought further investigation by filing Special

Criminal Application No.576/2003. This petition came to be disposed of by the Learned Single Judge of this Court on 11th December, 2003, opining that it would be open for the applicant to move the Sessions Court for appropriate relief. It may be noted that on behalf of the State, learned APP appearing had submitted that record of the investigation clearly shows that there are marks of violence on the body of the deceased persons. The applicant therefore, moved the learned Sessions Judge and sought further investigation by filing application dated 29th December, 2003. Learned Sessions Judge granted the application by order dated 21st May, 2004 and directed the investigating agency to make thorough investigation into certain peculiar aspects of the matter and call for a report thereon. The learned Judge inter-alia directed the investigating agency to inquire whether the boys had carried nylon rope(used for hanging them from the tree) from home or had purchased it from somewhere. Learned Judge also directed the investigating agency to inquire about the purchase of empty syringes and empty bottle containing drug which was found near to where the dead bodies of the boys were found hanging. A report was submitted by the police pursuant to order dated 21st May, 2004 passed by the Sessions Court on 1st November, 2004.

6. Not satisfied with the investigation carried out

and report submitted, complainant once again approached the Sessions Court on 18th December, 2004 and requested that the investigation be handed over to C.I.D.(Crimes). Learned Judge passed an order on 28th April, 2005 on the application filed by the complainant and called for a limited further investigation to be carried out by the Investigating Officer and not by C.I.D. The applicant therefore, approached this Court by filing Special Criminal Application No.911/2005. Learned Single Judge of this Court passed an order on 17th August, 2005 and entrusted further investigation to C.I.D. (Crimes) and directed the agency to submit its report within two months from the date of receipt of writ of this Court. Pursuant to this order passed by the Court, C.I.D.(Crimes) recorded statements of some other persons whose statements were not at all till then recorded and also collected further materials in the form of FSL reports, reports from psychologist on the contents of suicide note found from the body of one of the deceased persons and also subjected the accused persons to brain mapping and collected the reports thereof. Eventually, C.I.D. (Crimes) submitted an additional charge-sheet before the learned Sessions Judge on 4th April, 2006 and added Section 302 of Indian Penal Code as a charge against the accused persons.

7. The applicant has therefore, approached this Court and sought cancellation of bail granted earlier to respondents nos. 1 to 3 herein on various grounds.

8. It may be noted that though this Court granted bail to the four accused persons by order dated 26th December, 2002, the present applicant has joined only three of these persons as respondents in this application and perhaps by oversight not joined the fourth recipient of the earlier bail order namely, Rakeshbhai. Be that as it may, I have heard learned advocates appearing for the parties only with respect to the persons who are joined as respondents in this petition.

9. Learned advocate Shri Devang Joshi for Shri Premal Nanavati for the applicant submitted that this Court while granting regular bail to respondents nos. 1 to 3 herein had taken into account only that material which was collected by the investigating agency till then, at which point of time only charge levelled against the accused persons was of having abetted suicide and were charged for having committed offence punishable under section 306 of Indian Penal Code. He submitted that in view of the changed scenario namely, that of addition of a graver charge of having committed offence punishable under section 302 of Indian Penal Code, the

accused persons cannot be allowed to enjoy freedom pursuant to the earlier bail order. In short, he submitted that in view of the changed scenario, the bail order needs to be cancelled.

9.1 He further submitted that there is voluminous evidence collected by the investigating agency for framing a charge of offfence punishable under Section 302 of Indian Penal Code. He submitted that the accused persons had given threat to the deceased and had in fact physically assaulted and threatened them that if they did not bring back the eloped couple, they would be eliminated. The accused were under the impression that the deceased person had helped the couple to run away. It is not in dispute that wife of Narendra-who had run away with a nurse is sister of Rakeshbhai, one of the accused persons. This according to the learned advocate for the applicant was a strong motive for the accused to commit the offence. He pointed out that there are several eye-witnesses to these threats and beating given by the accused to the deceased.

9.2 It was further submitted that the investigating agency had found used syringe and empty bottle containing drug (which is used for making a person unconscious) near the bodies of the boys. It is further pointed out that suicide note found from one of the deceased persons was

not according to the expert's report in the handwriting of either of the deceased boys. According to the learned advocate therefore, this was a clear case of murder sought to be projected as suicide.

9.3 My attention was also invited to the further materials collected by C.I.D.(Crimes) during the investigation including the report of brain mapping of the accused persons.

9.4 It was submitted that the deceased had no reason to take an extreme step only out of fear and it was only the accused who had done them to death and, thereafter, tried to create evidence to project it as the case of suicide. It was submitted that this was a case of well planned cold blooded murder.

9.5 It was pointed out that as per the evidence collected by the investigation agency, deceased boys had not carried the nylon thread from home, nor were found to have purchased the same from the nearby centre i.e. Khedbrahma. Even the syringe and the drugs were not found to have been purchased by them from anywhere near the scene of incident.

9.6 It was therefore, submitted that this Court should cancel the bail granted to respondents nos. 1 to 3 in view of the changed

circumstances.

9.7 Reliance was placed on the unreported decision of Learned Single Judge of this Court dated 23rd May, 1997 passed in Criminal Misc. Application No.2986/1997 to urge before this Court that only remedy open for the applicant herein would be to seek cancellation of bail.

9.8 Reliance was also placed on the decision of the Apex Court in the case of **Puran v. Rambilas and another** reported in (2001) 6 Supreme Court Cases 338, to submit that though generally speaking, the grounds for cancellation of bail are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner, that could still be an exceptional circumstance, warranting cancellation of bail.

10. Learned APP Shri Kogje also supported the application and submitted that in view of the overwhelming evidence collected by the investigating agency, bail granted by this Court only on the premise that the accused persons are facing charge punishable under section 306 of Indian Penal Code, should be recalled. He submitted that at this stage, it would not be open for this Court to evaluate the evidence and

to scrutinise whether there are any material contradiction in the version of the witnesses.

11. Learned advocate Shri Yogesh Lakhani opposed the application for cancellation of bail and submitted that the accused persons have enjoyed liberty for more than four years and at no stage are reported to have misused the same. He submitted that only because a fresh charge is added in the charge-sheet, the same would not be a ground enough to cancel the bail in absence of any other intervening circumstances. He submitted that the applicant and other prosecution witnesses have changed their version from time to time raising doubt about the theory of murder. He further submitted that C.I.D. (Crimes) did not collect any further worthwhile material so as to convert the offences from that of Section 306 to 302 of Indian Penal Code. In short, he opposed this application for cancellation of bail.

12. Having heard learned advocates appearing for the parties, it is amply clear that this Court on 26th December, 2002 granted bail to the accused persons on the basis of available material on record collected by the investigating agency till then. This Court clearly opined that there are many loose ends in the investigation. Further, Court was of the opinion that the only charge made out was of

having committed offence punishable under section 306 of Indian Penal Code. On this condition, the Court found that accused need to be enlarged on bail. It cannot be denied that situation has materially changed since then. At the persistence of the applicant, the investigating agency had collected further material and found it appropriate to add a graver charge of the offence punishable under section 302 of Indian Penal Code. On this ground of material change in the circumstances and intervening subsequent development, I find that the bail order needs to be recalled. When this Court passed an order of bail in favour of the accused persons, investigating agency had not collected sufficient material to charge the accused persons for having committed murder. While granting bail gravity of the offences is a relevant consideration. The possibility that accused may not be available for trial is also to be examined by the Court. This cannot be done de-horse the charges against the accused. Thus in view of addition of grave charge in the charge-sheet, the accused must be rearrested and the bail order needs to be cancelled.

13. Though the learned advocates appearing for the parties have taken me to the materials collected by C.I.D.(Crimes) in juxtra position to what was already collected by the police prior thereto and through the hearing, I have formed certain

strong prima facie opinion with respect to such materials, at the request of learned advocate Shri Yogesh Lakhani for respondents nos. 1 to 3, I refrain from making any observations in this regard.

14. Suffice it to say that the bail order granted to respondents nos. 1 to 3 cannot operate any longer and same has got to be cancelled forthwith. Since the request of learned advocate for not recording full reasons for passing this order is accepted, same is with a rider that it will not be open for the said respondents to approach the Sessions Court with a fresh application of bail after their arrest pursuant to this order.

15. In the result, this application is allowed. Bail granted to respondents nos. 1 to 3 by order dated 26th December, 2002 passed by this Court in Criminal Misc. Application No.4943/2002 is cancelled.

16. The petition is disposed of. Rule made absolute accordingly.

(Akil Kureshi,J.)

(raghu)